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No. 559

In the Supreme Court of the United States

OCTOBER TERM, 1959

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

PITTSBURGH PLATE GLASS CO., *et al.*

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

REPLY TO BRIEF IN OPPOSITION OF PITTSBURGH PLATE GLASS CO.

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In its brief in opposition, the Company does not deny that the question presented by the petition is important; it argues only that the decision below is correct. It further contends (Br. in Op. 13-15), however, that there is an alternative ground for sustaining the judgment below, namely, that the Board order was invalid because of the alleged failure of Local 307 to comply with the non-Communist affidavit requirements of Section 9(h) of the Act.

The court of appeals specifically declined to reach this issue (Pet. 31). As we now show, the contention is without merit.

Section 9(h) of the Act, as it existed at the time of the Board proceedings herein,[1] required, as a condition to the processing of a representation petition or an unfair labor practice charge, that there be a non-communist affidavit on file for each officer of the labor organization initiating the proceeding and of "any national or international labor organization of which it is an affiliate or constituent unit" (Co. Br. 18). The representation petition in this case was filed by the International Brotherhood of Electrical Workers; it was the union certified by the Board; and it filed the unfair labor practice charge (R. 61, 28, 1-2, 4). The Company does not deny that the Electrical Workers, and its parent body the AFL-CIO, were in full compliance with Section 9(h). Its contention relates solely to Local 307 of the Electrical Workers, which assisted the International in organizing the employees at the plant (R. 61). Since Local 307 did not initiate the Board proceedings, nor is it a "national or international labor organization," the terms of Section 9(h) itself did not require compliance by that entity. However, as a matter of policy, the Board has required compliance by the local, even when the representation petition has been filed by the International, where the local is expected to be a party to the contract which may ultimately be concluded.[2]

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[1] Section 9(h) has since been repealed by Section 201(d) of The Labor-Management Reporting and Disclosure Act of 1959, Public Law 86-257, 73 Stat. 519.

[2] See *Lane-Wells Company*, 77 NLRB 1051; *United States Gypsum Company*, 77 NLRB 1098; *Magnolia Petroleum Company*, 78 NLRB 1168.

The Company offered to prove before the Board, both in the representation and in the unfair labor proceedings, that Local 307 was not in compliance with Section 9(h) in that, shortly after the representation petition was filed, John Logue had succeeded Luther Hite as the Recording Secretary of Local 307 but had not filed a non-communist affidavit (R. 18-20). The Board rejected this offer in accordance with its policy that the *facts* concerning compliance with Section 9(h) may not be litigated in representation or unfair labor practice proceedings but are to be determined only in separate administrative proceedings. The Board, however, conducted its own administrative investigation into this question, on the basis of which it concluded that Local 307 was in full compliance with Section 9(h) at all times relevant to the proceedings (R. 15, n. 3, 22, n. 4).[3]

We submit that, in these circumstances, the Board correctly declined to permit litigation in this proceeding of the sufficiency of Local 307's compliance with Section 9(h). The issue which the Company sought to raise did not involve any question as to the meaning of the terms used in Section 9(h), such as was presented in *National Labor Relations Board* v.

[3] The compliance files of the Board disclose that, in this investigation, an agent of the Board interviewed Hite and Logue as to their functions; that Logue denied that he had ever served as recording secretary; and that this was verified by an examination of the minutes of union meetings in 1956 and other years, which disclosed that the recording secretary was either Hite or someone specially designated to act in his place for purposes of the particular meeting, but never Logue.

Highland Park Manufacturing Co., 341 U.S. 322 (whether the CIO was a "national" labor organization), and *National Labor Relations Board* v. *Coca Cola Bottling Co. of Louisville*, 350 U.S. 264 (whether "officer" can be limited to those offices listed in the union's constitution). Rather, it involved the purely factual questions of who held the position of Recording Secretary, which was admittedly an office within the meaning of Section 9(h), and whether he had filed the required affidavit. The litigation of such questions in unfair labor practice and representation cases, unlike the consideration of the purely legal questions involved in *Highland Park* and *Coca Cola*, would inject a host of collateral issues into such proceedings.[4] This would be contrary to the Congressional intent [4a] to insure expeditious resolution of the "merits" of unfair labor practice or representation cases. Accordingly, since neither Section 9(h) nor the companion Sections 9(f) and (g) established any procedure for determining whether the affidavits and other information required by those provisions have been filed, we submit that the Board was justified in deciding to determine administratively the facts of compliance, and thus to avoid interrupting

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[4] The number of such issues is compounded by the financial and reporting requirements of the companion Sections 9(f) and (g), which would likewise be opened to litigation.

[4a] See 2 Leg. Hist. of the Labor Management Relations Act, 1947 (G.P.O., 1948), pp. 1542, 1547, 1625.

particular unfair labor practice or representation cases.[5]

Respectfully submitted,

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[5] When Sections 9(f), (g) and (h) were enacted, the Board established elaborate administrative machinery for the purpose of enabling it to keep a continual check on labor organizations using its processes and to determine whether they have filed and kept current the documents required by that section. See *National Labor Relations Board* v. *Greensboro Coca Cola Bottling Co.*, 180 F. 2d 840, 844, n.1 (C.A. 4). To assist it in its investigations, the Board encouraged parties to an unfair labor or representation proceeding to bring to its attention all matters affecting the union's compliance status. When it found reasonable cause to believe that a question as to sufficiency of compliance existed, it instituted a separate administrative proceeding to resolve that question. See *Sunbeam Corp.*, 94 NLRB 844; *Coca Cola Bottling Co. of Louisville*, 108 NLRB 490. This course was followed here—the Board investigated the Company's contention concerning Local 307's recording secretary and found that there was insufficient substance to it to warrant the institution of a formal compliance proceeding (n.3, *supra*).

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